THE HON'BLE MR JUSTICE V.V.S.RAO

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WRIT PETITION No.461 of 2006

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06.1.2006

Between:

G.Mallesh, S/o.G.Balaiah

And others

... Petitioners

AND

The Commissioner, Municipal Corporation of Hyderabad

And others

...Respondents

THE HON'BLE MR JUSTICE V.V.S.RAO

WRIT PETITION No.461 of 2006

ORDER:

The petitioners herein are carrying out petty business allegedly in their premises situated adjacent to Womens College main gate (North-East gate) in Koti area of Hyderabad. The first petitioner is selling cane juice shop, second petitioner is running STD booth, third petitioner is carrying on repairs of old bags, fourth petitioner is running Xerox shop and fifth petitioner is running fruit juice shop. The first respondent herein issued notices to the petitioners under Section 402 of Hyderabad Municipal Corporations Act, 1955 (the Act, for brevity). All these notices are dated 03.1.2005 and by the said notices, the petitioners were informed that they unlawfully erected/set up shops by encroaching upon road margin/pavement/footpath causing obstruction and inconvenience to the vehicular traffic and pedestrians and therefore, they were directed to remove the encroachments. They were also informed that failure on their part would result in

removal of the encroachments under Section 405 of the Act. These notices are assailed in this writ petition.

The impugned notices abundantly make it clear that the petitioners have set up their petty business shops by encroaching upon road margin/ pavement/footpath. However, the learned Counsel for the petitioners contends that the petitioners have not encroached upon road margin/ pavement/footpath and that they were set up the shops within the premises, which does not form part of the road margin. He also submits that the first respondent has taken action pursuant to the orders of the Division Bench comprising My Lord Hon'ble the Chief Justice G.S.Singhvi and Mr.Justice R.Subhash Reddy issued in W.P.No.20228 of 2001 dated 29.12.2005. He submits that as per the directions issued by the Division Bench, it is incumbent on the part of the first respondent first to identify the areas of encroachments and then to issue notice for removal of the encroachments. According to the learned Counsel, the first respondent has not conducted any enquiry nor inspected the area and not identified the area where the petitioners were set up shops on encroached land. Therefore, according to the learned Counsel for the petitioners, the whole exercise is arbitrary and illegal.

The matter was initially called at 1.10 pm before lunch recess. The learned Standing Counsel was directed to get instructions in the matter to know whether the petitioners have in fact set up their shops within the premises not forming part of the road margin. After lunch recess, after getting instructions in the matter, the learned Standing Counsel for Municipal Corporation of Hyderabad (MCH) submits that the petitioners' shops are situated at the road margin and that the petitioners have encroached the road portion. He also submits that necessary action was initiated as per the directions of the Division Bench of this Court in W.P. No.20228 of 2005.

W.P.No.20228 of 2005 was filed invoking the Public Interest Litigation (PIL) jurisdiction of this Court. *Inter alia* directions were sought to the Government of Andhra Pradesh and MCH to keep all the footpaths in walkable condition without any sort of obstruction and removal of encroachments on such footpaths. On 27.12.2005, the Division Bench issued orders in public interest for enforcing the provisions of Motor Vehicles Act, 1988. Again on 29.12.2005 the Division Bench issued orders clarifying the earlier orders. These directions issued on that day read as under.

> It is clarified that the Court has not passed absolute restraining against entertaining of injunction applications which may be filed against the Municipal Corporation of Hyderabad in connection with removal of encroachments from pavements and footpaths. In para 2 of the directions given by the Court it was already made clear that the subordinate Courts in the Cities of Hyderabad and Secunderabad shall not pass order of ad-interim temporary injunction, but they shall be free to pass appropriate order after hearing the parties. This direction is reiterated.
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> It is also revealed from the newspapers reports that the area from which the encroachments are required to be removed by the Municipal Corporation extends to several kilometers. Therefore, it will be appropriate for the authorities concerned to identify the specified areas of encroachment

in the first instance, then give notice to the encroachers for voluntary removing the encroachment and finally take action for removing the encroachment in a phased manner, in case, the encroacher voluntarily fails to remove the encroachment.

Having noticed that the area of encroachment requiring removal by MCH extends to several kilometers, the Division Bench directed MCH to identify the areas of encroachments and then issue notice to the encroachers for voluntarily removing the encroachments. A reading of the impugned notice would show that the petitioners were asked to remove the encroachments voluntarily which they made on the road margin/ pavement/footpath at King Koti adjacent to Women's College main gate (North-East main gate). From this, a reasonable inference can be drawn that MCH in obedience to the orders of this Court identified the area where the petitioners' shops are put up, as the area of encroachment and accordingly issued notices. A reading of the direction would not even remotely suggest that MCH is required to conduct and inspect as visualized by the petitioners.

As the impugned notices are issued keeping in view the directions issued by this Court, no interference is required. Further, under Section 405 of the Act, it shall be open to the Commissioner of MCH to remove encroachments even without giving notice. However, in this case, notices have already been issued in obedience to the orders of this Court and no interference is called for.

The writ petition is accordingly dismissed. No costs.

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(**V.V.S.RAO, J**)

January 06, 2006.

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